

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

OSCAR TURNER, Register No. 168840,)
Plaintiff,)
v.) No. 05-4384-CV-C-SOW
DAVE DORMIRE, et al.,)
Defendants.)

REPORT, RECOMMENDATION AND ORDER

Plaintiff, an inmate confined in a Missouri penal institution, brought this case under the Civil Rights Act of 1871, 42 U.S.C. § 1983, and its corresponding jurisdictional statute, 28 U.S.C. § 1343. This case was referred to the undersigned United States Magistrate Judge for processing in accord with the Magistrate Act, 28 U.S.C. § 636, and L.R. 72.1.

In his complaint for equitable relief and damages, plaintiff Oscar Turner asserts that he is being discriminated against, denied the opportunity to engage in corporate worship and studies, and otherwise denied the opportunity to practice his religion because of his faith. He has named Dave Dormire, Arthur Wood, Joe Gibson, C.O.1 Beck and C. Dorsey¹ as defendants.

Plaintiff has requested leave to proceed without prepaying the filing fee and costs. 28 U.S.C. § 1915(a). Pursuant to the Prison Litigation Reform Act, the court is required to screen prisoner cases and must dismiss a complaint, or any portion of the complaint, if satisfied that the action is frivolous, malicious, or fails to state a claim under which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1) and (2). Additionally, under section 1915(g), if a prisoner, while incarcerated, has had three cases dismissed on any of these grounds, the court must deny leave to proceed under section 1915(a). The only exception to the successive petition clause

¹C. Dorsey is an inmate. The other defendants are corrections officials and employees.

is when the prisoner faces "imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

Here, plaintiff alleges that his First Amendment rights are being violated and that he is being discriminated against because he wants to learn about and practice his Judaism religion. He asserts that necessary religious supplies have not been ordered timely, callouts have been changed or canceled, and Christian activities have been given preferential treatment. Plaintiff states that when he filed a grievance because things were not being done timely, plaintiff was subjected to reprisals and his name was removed from an outcount. Plaintiff also appears to suggest that some of the callouts were racially segregated. When he brought the reprisals to the attention of administrative personnel, corrective action was not taken. Plaintiff further asserts that defendant Dorsey, an inmate, has been given preferential treatment or some authoritative role in determining what services or study groups will be permitted, and defendant Dorsey has permitted Christian study groups to meet as part of the Judaism callouts.

Although plaintiff's allegations may not be sufficient to withstand a motion to dismiss or for summary judgment, they are sufficient, when liberally construed, to allow plaintiff to proceed at this stage.

Plaintiff also seeks a temporary restraining order preventing defendants, their agents, employees or inmate employees from "committing any acts or inactions that threatens or impedes the authority of this Court, pending a hearing on and disposition of" the issues in this case. He also wants defendants enjoined from violating the constitutional rights of individuals who are incarcerated.

"A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or his attorney can be heard in opposition . . ." Fed. R. Civ. P. 65(b).

The facts set forth in plaintiff's complaint and suggestions in support of temporary relief do not warrant the issuance of a temporary restraining order under the standards set forth above. Accordingly, plaintiff's request will be recommended denied.

The Prison Litigation Reform Act of 1995 requires inmates to pay the filing fee when bringing a civil case or filing an appeal in forma pauperis. 28 U.S.C. § 1915 (as amended Apr. 26, 1996). The records available to the court indicate plaintiff is capable of making an initial payment of \$6.95² toward the filing fee. Plaintiff should contact prison officials to have the initial payment processed. In the future, prison officials will withdraw funds from plaintiff's account and forward them to the court, until the filing fee is paid in full. If plaintiff fails to make the initial payment, his claims may be dismissed for failure to comply with court orders. Fed. R. Civ. P. 41(b).

Pursuant to L.R. 7.1, suggestions in opposition to pending motions should be filed within twelve days after the motion is filed. Reply suggestions should be filed within twelve days after the suggestions in opposition are filed. In some circumstances, the court will give the parties additional time to file suggestions or reply suggestions. Unless an order is issued extending the time, responses and suggestions must be filed within the twelve days allotted by the Rule. Requests for an extension of time should be filed prior to the expiration of the twelve days allowed for a response. Responses and suggestions filed out-of-time, without prior leave of court, may not be considered when the court issues its ruling on the pending matter.

IT IS, THEREFORE, ORDERED that plaintiff is granted leave to proceed in forma pauperis, pursuant to the provisions of 28 U.S.C. § 1915, on plaintiff's First Amendment and religious discrimination claims. It is further

ORDERED that within thirty days, plaintiff make an initial payment of \$6.95 toward the \$250.00 filing fee. It is further

²The initial payment is assessed at "20 percent of the greater of (A) the average monthly deposits to the prisoner's account; or (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal." The installment payments will be assessed at "20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid." 28 U.S.C. § 1915 (as amended Apr. 26, 1996). If plaintiff has not signed an authorization for release of inmate account funds, he will need to do so promptly.

ORDERED that within thirty days, the Attorney General of Missouri notify the court, in writing, for which defendants he will and will not waive service of process. It is further

ORDERED that defendants answer or otherwise respond, pursuant to Fed. R. Civ. P. 4 and 12, within sixty days, if service of process is waived, or within twenty days after service of process, if service of process is not waived. It is further

ORDERED that defendants are granted leave to depose plaintiff at his place of incarceration. It is further

RECOMMENDED that plaintiff's motion for a temporary restraining order be denied.

Under 28 U.S.C. § 636(b)(1), the parties may make specific written exceptions to this recommendation within twenty days. The District Judge will consider only exceptions to the specific proposed findings and recommendations of this report. Exceptions should not include matters outside of the report and recommendation. Other matters should be addressed in a separate pleading for consideration by the Magistrate Judge.

The statute provides for exceptions to be filed within ten days of the service of the report and recommendation. The court has extended that time to twenty days, and thus, additional time to file exceptions will not be granted unless there are exceptional circumstances. Failure to make specific written exceptions to this report and recommendation may result in a waiver of the right to appeal. *See* L.R. 74.1.

Dated this 26th day of January, 2006, at Jefferson City, Missouri.

/s/

WILLIAM A. KNOX
United States Magistrate Judge